

The Entrepreneur Parole Program: Is It Working?

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The U.S. Citizenship and Immigration Services (USCIS) recently started accepting applications for parole under the International Entrepreneur Rule (IER). This grant of parole is commonly referred to as “entrepreneur parole.”

The IER has a long and complicated history. Because the United States does not have a visa category that is specifically designed for company founders, international entrepreneurs who wish to establish and/or grow a U.S.-based business must fit into at least one of the existing visa categories, which can be difficult.

History of IER. In August 2016, the Obama administration proposed a rule to grant parole to help international entrepreneurs stay in the U.S. temporarily while starting and growing their companies. After receiving more than 750 comments, the prior administration published a final rule on January 17, 2017, which was supposed to take effect on July 17, 2017. However, on July 11, 2017, just six days before USCIS was to begin accepting applications, the Trump administration published a rule delaying the effective date until March 14, 2018, while it considered whether it would eliminate the program. The National Venture Capital Association, the American Immigration Council, and others sued, claiming that USCIS violated the Administrative Procedure Act in delaying implementation of the rule. On December 1, a federal district court agreed and vacated the delay rule. *Nat’l Venture Capital Ass’n v. Duke*, 2017 U.S. Dist. LEXIS 197738 (D.D.C. Dec. 1, 2017).

As a result of the court order, USCIS is now accepting applications for the IER program. Although USCIS plans to publish a proposed rule to eliminate the IER, until the rule is rescinded, international entrepreneurs who meet the program’s requirements can apply.

Requirements. The final rule requires the applicant-entrepreneur to demonstrate:

- The entrepreneur holds at least a 10% ownership stake in the start-up entity.
- The entrepreneur holds a central and active role in the operations of the start-up.
- The entrepreneur’s knowledge, skills, or experience will substantially assist with the growth and success of the start-up.

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- The start-up's formation occurred in the last five years.

The start-up will have a significant public benefit. Documentation of public benefit may include, but is not limited to:

- Evidence of investments from any investors, government awards, or grants.
- Evidence of revenue generation.
- Letters from government agencies, qualified investors, or established business associations attesting to how the start-up's research, products, or services, or the entrepreneur's knowledge, skills, or experience will advance the start-up's business.
- Media coverage of the start-up.
- Evidence of participation in a reputable start-up accelerator.
- Patent awards.

Substantial capital investment, grants, or awards received by the start-up, as follows:

- Within the last 18 months, received an aggregate of \$100,000 in government grants or \$250,000 from qualified investors.
 - A government grant must be from a U.S. federal, state, or local entity. The grant must be for economic development, research and development, job creation, or another similar monetary award directed at start-ups. The grant may not be part of a contract for goods or services, and must come from an entity or agency with a track record of granting funds to start-ups.
 - A qualified investor must have a significant track record of successful investments in other start-ups (\$600,000 in the last five years. Those investments must have resulted in two start-ups creating five full-time qualified jobs each, not including independent contractors, or \$500,000 revenue with an average of 20% annualized revenue growth in at least two start-up entities). The investor must also be an individual holding U.S. citizenship or lawful permanent residence, or be an entity majority owned and controlled, directly or indirectly, by U.S. citizens or lawful permanent residents.
- If only a substantial amount of the funding criteria is met, the entrepreneur may provide compelling evidence that the entity has substantial potential for rapid growth and job creation.

A single start-up may sponsor up to three entrepreneurs for parole. An entrepreneur granted parole is able to work in the United States for the start-up incident to her or his parole. The entrepreneur is also obligated to report any material changes regarding the start-up and the entrepreneur's role with the start-up during the parole period.

Filing. The applicant must file Form I-941, along with a \$1,200 filing fee and an \$85 biometrics fee.

After Approval. Upon approval of the I-941, the entrepreneur will be issued an I-797 Notice of Action and an I-512L Authorization for Parole of an Alien into the United States. Canadians may take these documents directly to the U.S.-Canada border to be paroled into the U.S. All others will be required to travel to a U.S. consulate to obtain travel documentation (such as a boarding foil). Using the documentation received at the consulate, the entrepreneur would then reenter the U.S., receiving parole at the border.

Work Authorization. Entrepreneurs granted parole through this program can receive up to five years of work authorization, in two 30-month increments.

Re-Parole (Extensions). To receive an additional grant of entrepreneur parole, entrepreneurs will need to again file Form I-941, demonstrating that the entrepreneurs maintain a 5% ownership stake in the start-up and continue to provide a public benefit to the United States through their role as an entrepreneur of the start-up entity (including maintaining a central and active role with the start-up). In addition the entrepreneur must demonstrate that the start-up:

- Received \$500,000 in qualifying investments, government grants, or government awards;
- Created at least five full-time qualified jobs during the initial parole period; or
- Reached at least \$500,000 in annual revenue and averaged 20% in annual growth during the initial parole period.

If the start-up does not meet these criteria, the entrepreneur may provide documentation of the start-up's substantial potential for rapid growth and job creation.

Spouses and Minor Children. Spouses and children may accompany the entrepreneur by filing Form I-131, Application for Travel Document. USCIS has reportedly updated Form I-131 for dependents of entrepreneurs, but has not yet released the revised form as of the time of this practice pointer. The filing fee will be \$575, and will require an additional \$85 biometrics fee.

Spouses will be able to apply for work authorization after receiving parole by filing an I-765 under the "(C)(34)" category.

Is IER Working? As far as we are aware, very few people have applied for entrepreneur parole yet, and USCIS has not issued any decisions. It may be because of the program's requirements. Or entrepreneurs may be waiting to see how others fare first. Finally, entrepreneurs may be worried that USCIS plans to go through the normal rulemaking process to terminate the program.

Nevertheless, the EIR is available to qualified entrepreneurs. Entrepreneurs should consider it as an additional visa option to allow themselves time to start or grow their U.S. startup companies.

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